9 FAM 42.12 RULES OF CHARGEABILITY

(a) Applicability

(TL:VISA-48; 10-1-91)

An immigrant shall be charged to the numerical limitation for the foreign state or dependent area of birth, unless the case falls within one of the exceptions to the general rule of chargeability provided by INA 202(b) and paragraphs (b) through (e) of this section to prevent the separation of families or the alien is classifiable under:

(1) INA 201(b),

(2) INA 101(a)(27)(A) or (B),

(3) section 112 of Pub. L. 101-649,

(4) section 124 of Pub. L. 101-649,

(5) section 132 of Pub. L. 101-649,

(6) section 134 of Pub. L. 101-649,

(7) section 584(b)(1) as contained in Sec. 101(e) of Pub. L. 101-202.

(b) Exception for Child

(TL:VISA-3; 8-30-87)

If necessary to prevent the separation of a child from the alien parent or parents, an immigrant child, including a child born in a dependent area, may be charged to the same foreign state to which a parent is chargeable if the child is accompanying or following to join the parent, in accordance with INA 202(b)(1).

(c) Exception for Spouse

(TL:VISA-3; 8-30-87)

If necessary to prevent the separation of husband and wife, an immigrant spouse, including a spouse born in a dependent area, may be charged to the foreign state to which the spouse is chargeable if accompanying or following to join the spouse, in accordance with INA 202(b)(2).

(d) Exception for Alien Born in the United States

(TL:VISA-3; 8-30-87)

An immigrant who was born in the United States shall be charged to the foreign state of which the immigrant is a citizen or subject. If not a citizen or subject of any country, the alien shall be charged to the foreign state of last residence as determined by the consular officer, in accordance with INA 202(b)(3).

(e) Exception for Alien Born in Foreign State in Which Neither Parent Was Born or Had Residence at Time of Alien's Birth

(TL:VISA-3; 8-30-87)

An alien who was born in a foreign state, as defined in section 9 FAM 40.1, in which neither parent was born, and in which neither parent had a residence at the time of the applicant's birth, may be charged to the foreign state of either parent as provided in INA 202(b)(4). The parents of such an alien are not considered as having acquired a residence within the meaning of INA 202(b)(4), if, at the time of the alien's birth within the foreign state, the parents were visiting temporarily or were stationed there in connection with the business or profession and under orders or instructions of an employer, principal, or superior authority foreign to such foreign state.

9 FAM 42.12 Related Statutory Provisions

(TL:VISA-48; 10-1-91)

For provisions of INA 201(b), see section 9 FAM 42.21 Related Statutory Provisions).

(TL:VISA-48; 10-1-91)

For provisions of INA 101(a)(27)(A) and (B), see sections 9 FAM 42.22 and 9 FAM 42.23 Related Statutory Provisions. (TL:VISA-48; 10-1-91)

For the provisions of sections 112, 124, 132 and 134 of Pub. L. 101-649, see sections 9 FAM 42.31, 9 FAM 45.1, 9 FAM 43.11, and 9 FAM 47.1 respectively.

Sec. 202

(TL:VISA-48; 10-1-91)

(b) RULES FOR CHARGEABILITY. -Each independent country, self-governing dominion, mandated territory, and territory under the international trusteeship system of the United Nations, other than the United States and its outlying possessions, shall be treated as a separate foreign state for the purposes of a numerical level established under subsection (a)(2) when approved by the Secretary of State. All other inhabited lands shall be attributed to a foreign state specified by the Secretary of State. For the purposes of this Act the foreign state to which an immigrant is chargeable shall be determined by birth within such foreign state except that

(1) an alien child, when accompanied by or following to join his alien parent or parents, may be charged to the foreign state of either parent if such parent has received or would be qualified for an immigrant visa, if necessary to prevent the separation of the child from the parent or parents, and if immigration charged to the foreign state to which such parent has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;

(2) if an alien is chargeable to a different foreign state from that of his spouse, the foreign state to which such alien is chargeable may, if necessary to prevent the separation of husband and wife, be determined by the foreign state of the spouse he is accompanying or following to join, if such spouse has received or would be qualified for an immigrant visa and if immigration charged to the foreign state to which such spouse has been or would be chargeable has not reached a numerical level established under subsection (a)(2) for that fiscal year;

(3) an alien born in the United States shall be considered as having been born in the country of which he is a citizen or subject, or, if he is not a citizen or subject of any country, in the last foreign country in which he had his residence as determined by the consular officer; and

(4) an alien born within any foreign state in which neither of his parents was born and in which neither of his parents had a residence at the time of such alien's birth may be charged to the foreign state of either parent.

(c) CHARGEABILITY FOR DEPENDENT AREAS.- Any immigrant born in a colony or other component or dependent area of a foreign state overseas from the foreign state, other than an alien described in section 201(b), shall be chargeable for the purpose of the limitation set forth in section (a), to the foreign state.

Sec. 714 of the International Security and Development Cooperation Act of 1981

(TL:VISA-3; 8-30-87)

Sec. 714. The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act shall be considered to have been granted with respect to Taiwan (China).

Sec. 103 of the Immigration Act of 1990. Treatment of Hong Kong Under Per Country Levels

(TL:VISA-48; 10-1-91)

The approval referred to in the first sentence of section 202(b) of the Immigration and Nationality Act shall be considered to have been granted, effective beginning with fiscal year 1991, with respect to Hong Kong as a separate foreign state, and not as a colony or other component or dependent area of another foreign state, except that the total number of immigrant visas made available to natives of Hong Kong under subsections (a) and (b) of section 203 of such Act in each of fiscal years 1991, 1992 and 1993 may not exceed 10,000.